

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: JONES et al.

Application Serial No.: 10/707,491

Filing Date: December 17, 2003

For: METHOD AND APPARATUS FOR  
CONDUCTING HYBRID  
TRANSACTIONS

) Confirmation No.: 1490

) Group Art Unit: 3692

) Examiner: Chencinski, Siegfried E.

) **Second AMENDED APPEAL BRIEF**

) Attorney Docket No.: G08.069

) **PTO Customer Number 28062**

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Mail Stop Appeal Brief – Patents (via EFS)  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Appellant hereby submits a second Amended Appeal Brief to the Board of Patent Appeals and Interferences in reply to the Notification of Non-Compliant Appeal Brief mailed July 31, 2007.

## **REAL PARTY IN INTEREST**

The present application is assigned to GOLDMAN, SACHS & CO., 85 Broad Street, New York, New York 10004, U.S.A.

## **RELATED APPEALS AND INTERFERENCES**

No other appeals or interferences are known to Appellants, Appellants' legal representative, or assignee, which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

## **STATUS OF CLAIMS**

Claims 1 - 33 are pending in this application. All pending claims stand rejected and are now being appealed.

## **STATUS OF AMENDMENTS**

No amendments are pending or were filed after the Final Office Action.

## **SUMMARY OF CLAIMED SUBJECT MATTER**

The present invention is concerned with methods, systems, and devices for issuing a unit to a holder. The unit may include a forward contract and a note or preferred stock securing obligations of the holder under the forward contract.

(Specification, Abstract, paragraphs [0015] – [0019])

### **Claim 1**

Claim 1 is directed to a method for issuing a unit to a holder that includes creating a forward contract with the holder having a contract term extending from an issue date of the unit to a settlement date and specifying a settlement rate for

calculating a share delivery of issuer stock to the holder at the settlement date in exchange for a settlement amount. (FIG. 1, forward contract 112; FIG. 2, operation 202; and paragraphs [0017] – [0019]) The method further includes creating a note securing obligations of the holder under the forward contract, with the note permitting the holder to convert the note into an amount of shares of issuer stock pursuant to a specified conversion formula. (FIG. 1, note 110; FIG. 2, operation 204; and paragraphs [0018] – [0027]). The claimed method further includes issuing, using a processor, the forward contract and the note as a unit (FIG. 1, unit 108; FIG. 2, operation 206; and paragraphs [0048] – [0053]).

### Claim 13

Dependent claim 13 depends from claim 8 that in turn depends from claim 1. Claim 8 states that the note introduced in claim 1 is a contingent payment debt instrument for tax purposes and claim 13 further states that the contingent note of claim 8 includes at least one of an interest adjustment mechanism and a contingent cash interest mechanism. Support for the claimed aspects of claim 13 are clearly provided in the Specification at paragraphs [0024] and [0030].

### Claims 15 – 19

Claim 15 depends from claim 1; claim 16 depends from claim 15; claim 17 depends from claim 16; claim 18 depends from claim 17; and claim 19 depends from claim 18. Claim 15 further specifies that the note introduced in claim 1 includes a first remarketing scheduled on a first remarketing date occurring prior to the settlement date. Each of claims 16 – 19 relate to remarketing aspects of the claimed note, as disclosed in the Specification at paragraphs [0025] and [0026].

### Claim 22

Independent claim 22 recites a unit administration system. The system includes a processor and a storage device in communication with the processor and storing instructions adapted to be executed by the processor. The stored instructions are adapted to be executed by the processor to identify terms of a forward contract

involving an issuer, a holder and an equity security (FIG. 1, forward contract 112; FIG. 2, operation 202; and paragraphs [0017] – [0019]); identify terms of a contingent convertible debt instrument involving the issuer, the holder and the equity security (FIG. 1, convertible note 110; FIG. 2, operation 202; and paragraphs [0017] – [0019]); and cause the issuance of a unit to the holder, the unit including the forward contract and the contingent convertible debt instrument (FIG. 1, unit 108; FIG. 2, operation 206; and paragraphs [0048] – [0053]).

#### Claim 25

Claim 25 is directed to a method for issuing a unit to a holder. The claim method includes establishing a purchase contract portion of the unit with holder, the purchase contract portion identifying a settlement price to be paid on a settlement date by the holder in exchange for a number of shares having a predetermined value (Abstract; FIG. 1, forward contract 112; FIG. 2, operation 202; and paragraphs [0017] – [0019]); establishing a note portion of the unit, said note portion including terms identifying a maturity date, an initial principal amount, at least a first remarketing date, and at least one contingent feature (FIG. 1, convertible note 110; FIG. 2, operation 202; and paragraphs [0017] – [0019]); and issuing, using a processor, the unit to the holder (FIG. 1, unit 108; FIG. 2, operation 206; and paragraphs [0048] – [0053]).

#### Claim 30

Claim 30 is specifically directed to a method for issuing a unit to a holder, including the operations of creating a forward contract obligating an issuer to pay a contract fee to the holder, said forward contract having a contract term and specifying a share delivery ratio for calculating a share delivery of issuer stock to the holder at an end of the contract term ( FIG. 1, forward contract 112; FIG. 2, operation 202; and paragraphs [0017] – [0019]); and creating a convertible debt instrument securing obligations of the holder under the forward contract, the convertible debt instrument permitting the holder to convert the note into an amount of shares of issuer stock pursuant to a conversion formula, and specifying a contingent distribution of additional

warrants at a first call date if a share price of the issuer stock is above a predetermined amount on the first call date (FIG. 1, convertible note 110; FIG. 2, operation 202; and paragraphs [0017] – [0019]). The method further includes issuing, using a processor, the forward contract and the convertible debt instrument as a unit in exchange for a price (FIG. 1, unit 108; FIG. 2, operation 206; and paragraphs [0048] – [0053]).

*Claim 32*

A unit pricing device including a processor, a communication device coupled to receive market information from at least a first market data source, and a storage device in communication with the processor and storing instructions adapted to be executed by the processor. The stored instruction are adapted to be executed by the processor to receive data identifying terms of a proposed unit including data identifying terms of a forward contract involving an issuer and an equity security, and data identifying terms of a contingent convertible debt instrument involving said issuer and said equity security (FIG. 1, forward contract 112; FIG. 2, operation 202; and paragraphs [0017] – [0019]); and to receive the market information from the market data source (paragraphs [0058] – [0064]); and to generate, based on the market information and said terms of the proposed unit, pricing data associated with the proposed unit (paragraphs [0064] – [0066]).

*Claim 33*

Claim 33 recites a computer-implemented method for issuing a unit to a holder. Specifically, the method includes receiving, in a computer, unit data, the unit data including data associated with an issuer stock, interest rate data, and yield data; calculating, using the computer and based on the unit data, terms of the unit; creating a forward contract having terms calculated by the computer, the forward contract having a contract term extending from an issue date of the unit to a settlement date, the forward contract specifying a settlement rate for calculating a share delivery of issuer stock to the holder at the settlement date in exchange for a settlement amount (paragraphs [0063] – [0066]); creating a note securing obligations of the holder under the forward contract, the note having terms calculated by the computer and permitting the holder to

convert the note into an amount of shares of issuer stock pursuant to a specified conversion formula (paragraphs [0063] – [0065]); and issuing the forward contract and the note as a unit (FIG. 1, unit 108; FIG. 2, operation 206; and paragraphs [0048] – [0053] and [0063]).

## **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 1 – 12, 14, 20, and 21 – 24 were rejected under 35 USC 103(a) as being disclosed by Birle Jr. et. (hereinafter, Birle) in view of Barron's Dictionary of Finance (hereinafter, Barron's).

Claim 13 was rejected under 35 USC 103(a) as being disclosed by Birle in view of Barron's in regard to claim 1, and further in view of King et al. (hereinafter, King).

Claims 15 - 19 were rejected under 35 USC 103(a) as being disclosed by Birle in view of Barron's in regard to claim 1, and further in view of Daughtery et al. (hereinafter, Daughtery).

Claims 25 - 29 and 31 were rejected under 35 USC 103(a) as being disclosed by Birle in view of Barron's in regard to claim 1, and further in view of Daughtery and Marlowe-Noren.

Claims 32 and 33 were rejected under 35 USC 103(a) as being disclosed by Birle in view of Green et al. (hereinafter, Green) and in further in view of Barron's.

## **ARGUMENT**

### ***I. Applicable Law***

All of the issues in this appeal are related to rejections under 35 U.S.C. § 103(a). In these rejections, the Examiner found the claims at issue to be obvious in view of a combination of references.

The law governing application of 35 U.S.C. § 103(a) is set forth in general terms as follows in *In re Kotzab*, 217 F.3d 1365 (Fed.Cir. 2000):

A claimed invention is unpatentable if the differences between it and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art [citing § 103(a)].

In comparing the claimed invention with the prior art, both the claimed subject matter as a whole and the references as a whole must be considered. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1143 (Fed.Cir. 1985).

The *Kotzab* case further sets out the following standards in regard to proposed combinations of references:

[T]o establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant. [Citations omitted]

The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved. [Citation omitted] In addition, the teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. [Citation omitted] The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art. [Citation omitted]<sup>1</sup>

Also, according to another point of law which is particularly relevant to this appeal, and as noted in the MPEP at § 2143.03, “[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” [Citing *In re Royka*, 490 F.2d 981 (CCPA 1974); emphasis added].

As will be evident from the following detailed discussion, the cited and relied Birle and Barron’s fail to disclose or suggest that for which the Examiner cites and relies

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<sup>1</sup> 217 F.3d at 1370.

upon them to disclose. Furthermore, the Examiner fails to provide any logical reasoning supported by the references for concluding the claims are obvious.

**II. Claims 1 – 12, 14, 20, and 21 - 24 are Patentable over Birle and Barron's under 35 USC. 103(a)**

Each of Appellant's independent claims 1, 22, 25, 30, 32, and 33 relate to a hybrid financial product. In particular, the recited method of claim 1 includes, inter alia, creating a forward contract having a contract term extending from an issue date of said unit to a settlement date; creating a note securing obligations of said holder under said forward contract; and issuing, using a processor, the forward contract and the note as a unit. Claim 22 claims the unit as a forward contract and a contingent convertible debt instrument. Thus, it is clear that the claimed unit in each of independent claims 1 and 22 specifically includes two different components – a forward contract and a note in claim 1 and a forward contract and contingent convertible debt instrument in claim 22.

Appellant respectfully submits that it is clear that two components are recited and claimed as forming the claimed "unit". Additionally, although the forward contract and note are issued as a "unit", the forward contract and the note are each distinct components of the unit.

Appellant respectfully notes that the Examiner cited and relied upon some of the same disclosure in Birle to allegedly disclose the claimed forward contract as well as the claimed note securing obligations under the forward contract. In particular, the Examiner relied upon Birle at page 1, paragraph [0005] for disclosing the two different components of Appellant's claimed unit (i.e., (1) the forward contract and (2) the note). That is, the Final Office Action relies upon the Birle disclosure of a single financial instrument, such as a bond (Birle, paragraph [0004]) and a convertible security, including a convertible bond (Birle, paragraph [0005]) for being both the claimed forward contract and the claimed note. Birle appears to disclose only a debt instrument (e.g., a bond) and not both the claimed forward contract and the claimed note. The Examiner's



reliance on the same passage of Birle for allegedly disclosing both components of the claimed unit emphasizes the flawed reasoning of the rejection.

Furthermore, Appellant respectfully submits that Birle fails to disclose the claimed forward contract. The financial terms recited in Appellant's claims and Specification have specific meanings in the relevant arts of finance and securities. As such, Appellant has exercised care to use financial terms such as, for example, forward contract, convertible note, contingent conversion, bond, etc. in a consistent manner. (See Appellant's Specification paragraphs [0017] – [0027]) Furthermore, the finance and securities terms recited in the claims are further defined and used in a manner consistent with the description of same in the Specification.

Contrary to Appellant's clear and unambiguous claim language, the Examiner continues to use financial terms such as 'bonds', 'convertible bonds', and 'securities' in general as though such terms are not terms of art having specific meanings in the relevant fields of, for example, finance and securities. For example, the Examiner responds to Appellant's previously filed Response and Amendment that "[B]onds, convertible bonds and every other financial security is, among other things, a contract. They would not be securities were that not so. These instruments are implicitly and inherently futures instruments in a real sense of the term." (See Final Office Action, page 16) From this and other statements in the Office Action, it appears that the Examiner does not recognize or at least properly read the claims in the context within which they are stated. The claims that are fully supported and commensurate with the Specification.

Birle does not disclose or suggest a bond or convertible bond is a forward contract. A forward contract, as well understood by those skilled in the relevant arts of finance, is not the same as or suggestive of a bond, convertible or otherwise. As stated in Appellant's Specification, a forward contract includes terms obligating the holder to pay an amount (the "settlement price") to issuer at a particular date (the "settlement date") in exchange for a variable number of shares of stock of issuer. The forward contract specifies that holder is to receive an amount of stock of the issuer that initially

(e.g., as of the "issue date" of the unit) has a value equal to the settlement price. (Specification, paragraph [0017]) Thus, consistent with the meaning of a "forward contract" within the art and the Specification, the holder pays the issuer an amount ("settlement price") at some point in the future ("settlement date") upon delivery, according to the terms of the forward contract. A forward contract is an agreement to trade in the future, under the conditions provided by the forward contract.

The Final Office Action admits that Birle does not disclose issuing a forward contract and a note as a unit. The Final Office Action also states that Barron's "discloses convertible bonds are issued as a unit. Accordingly, an ordinary practitioner ... would have found it obvious to have known that a convertible bond is issued as a unit made up of a forward contract with a note known as a bond. As such, it would have been obvious for such practitioner to have combined the art of Birle with the art of Barron's Financial Dictionary in order to issue units to holders which contain a forward contract with a securing note and a conversion privilege for such note to be converted by holder to issuer's stock under certain conditions at holder's option, motivated by an opportunity to benefit issuer's, holders, capital markets and the general public" (See Final Office Action, pages 3 – 4).

By the statements of the Final Office Action, it appears that the Examiner attempts to define a convertible bond as an issued unit including "a forward contract with a note known as a bond" (Final Office Action, p. 3, para. 3). Here again, the Examiner fails to acknowledge a fundamental aspect of the claimed invention. Namely, the Examiner fails to comprehend the issued unit comprises the distinct components of (1) a forward contract and (2) a note. The claimed note is not the same as the claimed forward contract.

Appellant submits that it remains clear that the cited and relied upon Birle and Barron's do not disclose or suggest that for which they were cited and relied upon for disclosing and suggesting. In particular, Barron's Financial Dictionary defines a unit as,

"3. more than one class of securities traded together; one common share and one subscription warrant might sell as a unit, for example.; 4. in

primary and secondary distributions of securities, one share of stock or one bond.”

That is, Barron’s discloses a unit as one share of stock or one bond; and more than one class of securities traded together. At no point does Barron’s disclose or suggest a unit defined as that which is claimed by Applicant. That is, Barron’s fails to disclose or suggest the claimed unit of a forward contract and a note (claims 1 and 33); a forward contract and a contingent convertible debt instrument (claim 22 and 32); a purchase contract and a note (claim 25); and a forward contract and a convertible debt instrument (claim 30). Barron’s only example of a unit including more than one class of securities is a common share and a subscription warrant. Neither a common share nor a subscription warrant is claimed in the pending independent claims. Barron’s common share and a subscription warrant are not the same as, either implicitly and/or inherently, or suggestive of the types of securities recited in the claims.

Exception is taken with the Examiner’s statement that “an ordinary practitioner ... would have found it obvious to have known that a convertible bond is issued as a unit made up of a forward contract with a note known as a bond”. In particular, the alleged “convertible bond” is not that which is claimed by Applicant. Applicant does not refer to the recited unit as a convertible bond. A convertible bond is a specific type of security instrument, as is understood by those skilled in the relevant arts. Furthermore, Barron’s does not disclose or suggest the alleged “convertible bond”, as concluded by the Examiner. The definitions provided by Barron’s for a unit are clear, specific, and do not include or suggest the specific “unit” recited by Applicant.

Again, Birle fails to disclose a forward contract, it merely discloses a bond (as cited and relied upon). Therefore, Applicant respectfully submits that even if the bonds of Birle and the definition of a unit as defined by the cited and relied upon Barron’s were combined (not admitted as feasible by Applicant), the combination would not render claims 1 and 22 (and the other independent claims 25, 30, 32, and 33) obvious under 35 USC 103(a). Claims 2-12, 14, 20, and 21 depend from claim 1; claims 23 and 24 depend from claim 22.

Accordingly, Applicant respectfully requests the reconsideration and withdrawal of the rejection of claims 1–12, 14, 20, and 21-24 under 35 USC 103(a).

**III. Claim 13 is Patentable over Birle in View of Barron's and King under 35 USC. 103(a)**

Inasmuch as the Examiner relied upon Birle and Barron's as applied to claim 1 and relied upon King for only disclosing a contingent note that includes at least one of an interest adjustment mechanism and a contingent cash interest mechanism, Appellant submits that the combination of Birle, Barron's, and King does not render claim 13 obvious. In particular, the cited and relied upon combination of references fail to correct or overcome the deficiencies discussed above regarding claim 1. Namely, the Birle/Barron's/King combination does not disclose or suggest the claimed unit including a forward contract and a note.

Therefore, Appellant respectfully requests the reconsideration and withdrawal of the rejection of claim 13 under 35 USC 103(a).

**IV. Claims 15 – 19 are Patentable over Birle in View of Barron's and Daugherty under 35 USC. 103(a)**

The Examiner relied upon Birle and Barron's as applied to claim 1. The combination of same with Daugherty is insufficient to correct or overcome the deficiencies discussed above regarding claim 1. That is, the Birle/Barron's/Daugherty combination does not disclose or suggest the claimed "unit" including a forward contract and a note.

Therefore, Appellant respectfully requests the reconsideration and withdrawal of the rejection of claims 15 - 19 under 35 USC 103(a).

**V. Claims 25 – 29 and 31 are Patentable over Birle in View of Barron's, Daugherty, and Marlowe-Noren under 35 USC. 103(a)**

Similar to claim 1 discussed above with regard to Birle and Barron's, claim 25 claims a unit including two distinct portions. Here, the unit of claim 25 includes a purchase contract portion and a note portion. Appellant submits that the combination of Birle, Barron's, Daugherty, and Marlowe-Noren does not render claim 25 obvious since the combination does not disclose a "unit" as claimed. In particular, the Birle/Barron's/Daugherty/ Marlowe-Noren combination does not disclose or suggest the claimed unit including a purchase contract portion and a note portion. The cited combination also fails to disclose a unit including a forward contract and a convertible debt instrument as recited in claim 31.

Therefore, Appellant respectfully requests the reconsideration and withdrawal of the rejection of claims 25 – 29 and claim 31 under 35 USC 103(a).

**VI. Claims 32 and 33 are Patentable over Birle in View of Green and Barron's under 35 USC. 103(a)**

Inasmuch as the Examiner relied upon Birle and Barron's for reasons similar to those provided regarding and applied to claim 1, Appellant submits that the combination of Birle, Barron's, and Green does not render claims 32 and 33 obvious. In particular, the cited and relied upon combination of references fails to correct or overcome the deficiencies discussed above regarding claim Birle and Barron's. Namely, the Birle/Barron's/Green combination does not disclose or suggest the claimed "unit" as claimed by Appellant.

Therefore, Appellant respectfully requests the reconsideration and withdrawal of the rejection of claims 32 and 33 under 35 USC 103(a).

## CONCLUSION

Applicants respectfully suggest that rejections of claims 1 – 33 are improper and request that the rejections be reversed. If any issues remain, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is kindly invited to contact the undersigned. If any issues remain, or if the Examiner or the Board has any further suggestions for expediting allowance of the present application, kindly contact the undersigned using the information provided below.

Respectfully submitted,

August 30, 2007  
Date

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Appendix A - Claims  
Appendix B - Evidence  
Appendix C - Related Proceedings

## Appendix A - Claims

The following is a complete copy of the claims involved in the appeal:

1. A method for issuing a unit to a holder, comprising:  
creating a forward contract with said holder having a contract term extending from an issue date of said unit to a settlement date and specifying a settlement rate for calculating a share delivery of issuer stock to said holder at said settlement date in exchange for a settlement amount;  
creating a note securing obligations of said holder under said forward contract, said note permitting said holder to convert said note into an amount of shares of issuer stock pursuant to a specified conversion formula; and  
issuing, using a processor, said forward contract and said note as a unit.
2. The method of claim 1, wherein said note is at least one of: a convertible debt instrument, a contingent convertible debt instrument, a convertible preferred instrument, a preferred stock instrument, and a fixed income instrument.
3. The method of claim 1, wherein said forward contract obligates said issuer to pay a contract fee to said holder during said contract term.
4. The method of claim 3, wherein said contract fee is specified as an annual contract payment rate paid quarterly during said term.
5. The method of claim 1, wherein said note has a maturity date, said maturity date occurring after said settlement date.
6. The method of claim 5, wherein said settlement date is less than or equal to about four years after said issue date.

7. The method of claim 1, wherein said conversion formula specifies an initial share price, an initial share conversion price, an initial share conversion premium, and a share conversion ratio.

8. The method of claim 1, wherein said note is a contingent payment debt instrument for tax purposes.

9. The method of claim 8, wherein said contingent note includes a contingency event occurring after said settlement date, said contingency event causing said holder to receive an amount of contingent interest if the trading price of the note is greater than a specified percentage of the accreted principal amount of said note.

10. The method of claim 9, wherein said contingency event causes a distribution of a number of warrants.

11. The method of claim 8, wherein said contingent note includes the distribution of additional warrants at a first call date associated with said note.

12. The method of claim 11, wherein said additional warrants are distributed if a share price of said issuer stock has increased above a predetermined amount since said issue date.

13. The method of claim 8, wherein said contingent note includes at least one of an interest adjustment mechanism and a contingent cash interest mechanism.

14. The method of claim 1, wherein said note further includes an issuer call option arising on a specified date prior to a maturity of said note.



15. The method of claim 1, wherein said note further includes a first remarketing scheduled on a first remarketing date occurring prior to said settlement date.

16. The method of claim 15, wherein said first remarketing is a capped remarketing.

17. The method of claim 16, wherein said note further includes at least a second capped remarketing scheduled after said first remarketing date.

18. The method of claim 17, wherein said note further includes an opportunistic remarketing period after said settlement date and during which said issuer can elect to cap a remarketing or not.

19. The method of claim 18, wherein said note further includes an uncapped remarketing scheduled after said opportunistic remarketing period.

20. The method of claim 1, wherein said note is at least one of a zero coupon note and a note having a low initial interest accretion rate.

21. The method of claim 1, wherein said forward contract specifying that said holder never receives an amount of issuer stock worth more than said settlement amount.

22. A unit administration system, comprising:  
a processor; and  
a storage device in communication with said processor and storing instructions adapted to be executed by said processor to:  
identify terms of a forward contract involving an issuer, a holder and an equity security;

identify terms of a contingent convertible debt instrument involving said issuer, said holder and said equity security; and

cause the issuance of a unit to said holder, said unit including said forward contract and said contingent convertible debt instrument.

23. The unit administration system of claim 22, further comprising a communication device coupled to receive information from at least one of said issuer, said holder, and a market data source.

24. The unit administration system of claim 22, wherein said terms of said contingent convertible debt instrument include conversion terms requiring said issuer to deliver to said holder value equal to an accreted principal amount of said contingent convertible debt instrument and an amount of shares having a value equal to a remaining conversion value of said contingent convertible debt instrument.

25. A method for issuing a unit to a holder, comprising:  
establishing a purchase contract portion of said unit with said holder, said purchase contract portion identifying a settlement price to be paid on a settlement date by said holder in exchange for a number of shares having a predetermined value;  
establishing a note portion of said unit, said note portion including terms identifying a maturity date, an initial principal amount, at least a first remarketing date, and at least one contingent feature; and  
issuing, using a processor, said unit to said holder.

26. The method of claim 25, said purchase contract portion further identifying a contract payment amount to be paid to said holder.

27. The method of claim 25, wherein at least one of said establishing a purchase contract portion, establishing said note portion and issuing said unit is performed using a computing device.

28. The method of claim 25, said note portion further comprising:  
terms permitting said holder to convert said note portion into an amount of shares of issuer stock pursuant to a conversion formula.

29. The method of claim 25, wherein said at least one contingent feature is an additional distribution of warrants at a first call date if a share price is greater than a threshold amount.

30. A method for issuing a unit to a holder, comprising:  
creating a forward contract obligating an issuer to pay a contract fee to said holder, said forward contract having a contract term and specifying a share delivery ratio for calculating a share delivery of issuer stock to said holder at an end of said contract term;  
creating a convertible debt instrument securing obligations of said holder under said forward contract, said convertible debt instrument permitting said holder to convert said note into an amount of shares of issuer stock pursuant to a conversion formula, and specifying a contingent distribution of additional warrants at a first call date if a share price of said issuer stock is above a predetermined amount on said first call date; and  
issuing, using a processor, said forward contract and said convertible debt instrument as a unit in exchange for a price.

31. The method of claim 30, wherein at least one of said creating a forward contract, creating a convertible debt instrument, and issuing said forward contract is performed using a computer.

32. A unit pricing device, comprising:  
a processor;  
a communication device coupled to receive market information from at least a first market data source; and

a storage device in communication with said processor and storing instructions adapted to be executed by said processor to:

receive data identifying terms of a proposed unit including data identifying terms of a forward contract involving an issuer and an equity security, and data identifying terms of a contingent convertible debt instrument involving said issuer and said equity security;

receive said market information from said market data source; and

generate, based on said market information and said terms of said proposed unit, pricing data associated with said proposed unit.

33. A computer-implemented method for issuing a unit to a holder, comprising:

receiving, in a computer, unit data, said unit data including data associated with an issuer stock, interest rate data, and yield data;

calculating, using said computer and based on said unit data, terms of said unit;

creating a forward contract having terms calculated by said computer, the forward contract having a contract term extending from an issue date of said unit to a settlement date, said forward contract specifying a settlement rate for calculating a share delivery of issuer stock to said holder at said settlement date in exchange for a settlement amount;

creating a note securing obligations of said holder under said forward contract, said note having terms calculated by said computer and permitting said holder to convert said note into an amount of shares of issuer stock pursuant to a specified conversion formula; and

issuing said forward contract and said note as a unit.

## **Appendix B – Evidence**

This appendix is empty.

## **Appendix C – Related Proceedings**

No other appeals or interferences are known to Appellant or Appellant's legal representative which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

Therefore, there are no copies of decisions rendered by a court or the Board in any related proceeding to include herewith.